



# County of San Mateo

## Inter-Departmental Correspondence

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**Department:** PLANNING AND BUILDING

**File #:** 16-786

Board Meeting Date: 12/5/2017

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**Special Notice / Hearing:** None  
**Vote Required:** Four-fifths (4/5)

**To:** Honorable Board of Supervisors

**From:** John C. Beiers, County Counsel

**Subject:** Adopt an Interim Ordinance extending through December 12, 2018 the temporary moratorium on commercial nonmedical marijuana activity and outdoor cultivation of marijuana on the grounds of a private residence, within the unincorporated area of San Mateo County, to the full extent authorized under State law.

### **RECOMMENDATION:**

Adopt an Interim Urgency Ordinance of the County of San Mateo Board of Supervisors making findings and extending through December 12, 2018 the temporary moratorium on commercial nonmedical marijuana activity and outdoor cultivation of marijuana on the grounds of a private residence, within the unincorporated area of San Mateo County, to the full extent authorized under State law, and waive the reading of the ordinance in its entirety.

### **BACKGROUND:**

This moratorium is set to expire on December 12, 2017 and extending it is necessary to avoid a gap in the regulatory framework for nonmedical marijuana. Under State law, in the absence of local regulatory requirements, commercial nonmedical marijuana activity may proceed once the State begins issuing licenses. Local authorities have the ability to regulate such activity. Even if the Board were to adopt immediately the concurrently submitted ordinance setting forth a comprehensive marijuana regulatory scheme, the effective date of the ordinance would not be earlier than January 1, 2018, when the State plans to begin issuing licenses. This extension of the moratorium would prohibit commercial nonmedical marijuana activity from proceeding until the Board adopts the ordinance, or, if the Board prefers a different form of ordinance, until staff has developed and proposed a revised ordinance, and the Board has adopted such ordinance.

On November 8, 2016, the voters of the State of California enacted Proposition 64, known as the Control, Regulate and Tax Adult Use of Marijuana Act (the "AUMA"), which establishes a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana for use by adults 21 years and older.

Commercially, the AUMA created a State licensing system which will authorize businesses to legally

cultivate, distribute, transport, store, manufacture, process, and sell nonmedical marijuana, with such licenses to be issued no later than January 1, 2018. However, State licensing authorities cannot approve an application for a State license if approval of the State license will violate the provisions of any local ordinance or regulation.

Recreationally, the AUMA generally allows adults 21 years of age or older to possess, process, transport, purchase, obtain, or give away to persons 21 years or older certain amounts of marijuana and to plant, cultivate, harvest, dry, or process up to six (6) marijuana plants in their private residences. However, local authorities may enact and enforce “reasonable regulations” regarding the six marijuana plants, including the complete prohibition of outdoor planting, cultivating, harvesting, drying, and/or processing.

A study session on December 6, 2016 revealed that developing a local regulatory approach to nonmedical marijuana is complex, with many stakeholders, a wide range of opinions, important policy considerations, and an opportunity to coordinate at a regional level.

Prior to this Interim Ordinance, the County’s Ordinance Code already prohibited commercial activities related to medical marijuana, including advertising, sales, and profit related to marijuana, which is why this interim ordinance addressed only non-medical marijuana. Also, the federal government has not sanctioned the cultivation, sale, or possession of nonmedical marijuana and, in fact, classifies marijuana as a Schedule 1 Drug under the Federal Controlled Substances Act, 21 U.S.C. §§ 801 *et seq.*

Significant concerns have been raised regarding the impacts that possession, planting, cultivation, harvesting, drying, processing, distributing, transporting, storing, manufacturing, and sale of nonmedical marijuana will have on public health, safety, and welfare in the County, including, without limitation, protection of environmental resources and neighborhood quality; youth exposure, education and outreach; proper security and safety measures; and increased crime and nuisance.

On December 13, 2016, the Board of Supervisors unanimously enacted a temporary 45-day moratorium on (1) all commercial or industrial use involving marijuana (including, without limitation, manufacture, processing, laboratory testing, labeling, storing, wholesale, distribution and retail) within the unincorporated area of the County and (2) outdoor planting, cultivation, harvesting, drying, or processing of marijuana plants for nonmedical use within the unincorporated area of the County.

On January 24, 2017, the Board of Supervisors voted to extend this Interim Ordinance 10 months and 15 days, through December 12, 2017.

On June 27, 2017, the Governor approved Senate Bill 94 (SB 94), which repealed the Medical Marijuana Regulation and Safety Act (MMRSA), included certain provisions of MMRSA in the licensing provisions of AUMA and incorporated the framework for marijuana activity established by AUMA. MMRSA and AUMA outlined state regulatory frameworks which the State aims to align under one regulatory framework in SB 94. SB 94 preserves local authority to regulate medical and nonmedical marijuana and authorizes licensing authorities to issue rules and regulations on commercial marijuana activity. As anticipated by SB 94, the State recently issued its draft proposed regulatory scheme for marijuana activity on November 16, 2017.

Since the Board of Supervisors extended this Interim Ordinance in January of 2017, the Board and

County staff have continued to study options for allowing and regulating commercial marijuana activities within the County. On July 11, 2017, the Board of Supervisors held another study session regarding marijuana-related activities and the potential impacts of such activities in the County. In addition, County staff has worked on developing a comprehensive regulatory approach to marijuana-related activities allowed under State law and has conducted outreach across the County regarding the County's proposed regulatory approach to marijuana-related activity.

County staff has prepared a form of ordinance containing a comprehensive regulatory approach to marijuana-related activities, allowing regulated medical and non-medical commercial cultivation and prohibiting other activities while the County continues to study other commercial activities, and is concurrently submitting via separate Board item said ordinance for the Board's consideration. However, even if the ordinance is approved, the soonest it would be effective would be after the current December 12, 2017 expiration date for this moratorium, creating, in the absence of a moratorium, the potential for marijuana-related activity to proceed prior to the effective date of the ordinance.

In connection with this current extension of the temporary moratorium, staff has posted a notice of the hearing to extend further the temporary moratorium and, in the notice, included a report of the measures taken to alleviate the conditions that led to adoption of the interim ordinance on December 13, 2016, as required by Government Code section 65858(d). Those measures were as follows:

- The County undertook an interdepartmental effort to evaluate issues related to cannabis, composed of staff from the County Manager's Office, the District Attorney's Office, Environmental Health, the San Mateo County Health System, Department of Planning and Building, the San Mateo County Agricultural Commissioner, the San Mateo County Sheriff's Office and the County Counsel's Office;
- The County engaged in a public process to receive input from stakeholders regarding both medical and nonmedical cannabis;
- Staff conferred with other jurisdictions within the County and attempted to organize a County-wide regional approach to issues relating to cannabis; and
- Staff researched and analyzed the requirements of the newly enacted State laws governing both medical and nonmedical cannabis, including SB 94 which was enacted after the January 2017 extension of this temporary moratorium and the associated draft State regulations released on November 16, 2017.
- Staff has prepared a form of ordinance implementing a comprehensive regulatory approach to cannabis-related activities for consideration by the Board of Supervisors.

#### **DISCUSSION:**

In order to avoid the immediate threat to the public health, safety, and welfare which will result from unregulated, commercial, nonmedical marijuana activity and outdoor cultivation for personal use, to allow the Board sufficient time to study and consider local regulation of nonmedical marijuana activity and to prevent a regulatory gap prior to the effective date of any ordinance the Board may choose to enact, it is recommended that the Board extend the temporary moratorium on:

- All commercial and/or industrial use involving nonmedical marijuana, including, without limitation, the manufacture, processing, testing, labeling, storing, distribution, wholesale, and retail within the unincorporated area of the County; and

- Outdoor planting, cultivating, harvesting, drying, and/or processing of nonmedical marijuana.

It is recommended that, pursuant to Government Code Section 65858, the Board extend the temporary moratorium for an additional 12 months, until December 12, 2018. This will provide staff an opportunity to continue considering options and legal authority to regulate nonmedical marijuana activity in a manner consistent with the newly-enacted State laws. In addition, this will ensure that no marijuana-related activity takes place prior to the effective date of any ordinance implementing a regulatory approach to marijuana. If the Board ultimately adopts in its current form the proposed ordinance creating a comprehensive regulatory approach which is being concurrently presented with this moratorium, the moratorium will be extinguished by operation of law upon the effective date of the proposed ordinance.

County Counsel has reviewed and approved the proposed urgency ordinance as to form.

**SHARED VISION 2025:**

Adopting this proposed urgency ordinance is consistent with the County's healthy community, prosperous community, livable community, environmentally conscious community, and collaborative community Shared Vision goals.

**FISCAL IMPACT:**

There is no known fiscal impact associated with extending the temporary moratorium.